

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

ROSS MORGAN

Plaintiff,

DOCKET NO. 18-CV-6778
AFFIRMATION
IN SUPPORT OF
APPLICATION TO NOT ENTER
JUDGMENT

-VS-

CONCOURS CLASSIC MOTOR CARS, INC
DBA CONCOURS CLASSIC RESTORATION
And CLARK RITTERSBACH

Defendants

STATE OF NEW YORK)
COUNTY OF MONROE)

DAVID R. MORABITO, being duly sworn, deposes and states:

1. I am duly licensed in the State of New York and I am admitted to practice in the United States District Court for the Western District of New York and the United States Court of Appeals for the Second Circuit. Deponent represents the above-stated defendants in this action.

2. That on September 4, 2019, in Document 19, Plaintiff filed a Notice of Motion for Entry of Judgments pursuant to an Affidavit of Confession of Judgment executed by Defendant Rittersbach on behalf of Defendant Concours Classic Motor Cars, LLC DBA Concours Classic Restoration and the Affidavit of Confession of Judgment executed by Defendant Clark Rittersbach on his own behalf.

3. That Clark Rittersbach executed the hereinstated Confession of Judgment to show good faith that he was attempting to rectify this lawsuit and to minimize any economic responsibility to the Plaintiff.

4. That as a result of the lawsuit initiated by Plaintiff against the Defendants, Clark Rittersbach, has had a serious economic business “down turn” of his car restoration business. Pursuant to this “down turn”, Defendant Clark Rittersbach does not have any other employees to assist him in retrieving car parts subject to this pending lawsuit.

5. That Defendant Clark Rittersbach has three (3) 48 foot shipping containers and three (3) 27 foot trailers containing car parts that need to be inventoried and returned to the Plaintiff and others.

6. That Defendant Clark Rittersbach is inventorying the parts himself.

7. That once Defendant Clark Rittersbach has inventoried all parts, it is the hope of the Defendants that he will be able to forward most, if not all, the car parts and items subject to this lawsuit.

8. That Defendant Clark Rittersbach has repeatedly asked Plaintiff to provide a specific date to send a representative and/or agent of Plaintiff to inventory the car parts/items that are ready for shipment as previously agreed by the parties.

9. That Plaintiff has not sent a representative and/or agent to inventory the car parts/items or make arrangements for shipping said car parts/items as was originally agreed to a number of months ago when the Confession of Judgments were acknowledged.

10. That the return of the car parts/items to Plaintiff is critical as said parts and items shipped will clearly reduce the amount of the Confession of Judgments.

11. That Defendant Clark Rittersbach is respectfully requesting the Court to order Plaintiff and/or his representatives to inspect, inventory and then pay for shipment of said car parts/items in order to reduce the amount of the Judgments.

WHEREFORE, it is respectfully requested that an Order be entered in denying Plaintiff's request to file the Confession of Judgments against the Defendants until the car parts and items have been returned to the Plaintiff to determine the amount of the final Judgments.

/s/ David R. Morabito
Counsel to Defendants

Sworn to before me this
23rd Day of September, 2019

/s/ Colette M. Gagnier

Notary Public, State of New York
Qualified in Monroe County
My commission expires 02/28/21

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ROSS MORGAN

Plaintiff ,

Docket No. 18-CV-6778

AFFIDAVIT OF SERVICE

-VS-

CONCOURS CLASSIC MOTOR CARS, INC
DBA CONCOURS CLASSIC RESTORATION
And CLARK RITTERSBACH

Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2019, I electronically filed the attached Answering Affirmation with the Clerk of the United States District Court for the Western District of New York using the CM/ECF system, which sent notification of such filing to the following:

1. Clerk- United States District Court for the Western District of New York
2. Stephen F. Gehringer, Esq.

/s/David R. Morabito, Esq.

David R. Morabito, Esq.
PO Box 187
117 W. Commercial Street
East Rochester, NY 14445
585-586-5770

Sworn to before me this
24th day of September, 2019

/s/ Colette M. Gagnier

Notary Public
Commission Expires 02/28/21